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TERRITORY AND DISTRICT

It is well known that from the time when the United States asserted independence of England and established an organized government we have had what other nations would have called a colonial system and a definite colonial policy ; but with the memory of the many humiliations we had suffered from the hands of the English so fresh in our minds, the term " colony " seemed to carry with it something of reproach and inferiority, and consequently it was an appellation most carefully to be avoided. The name which was adopted in place of colony and the policy that was established for the dependency thereby designated are closely bound up with the first organization of our government. In order to facilitate the ratification of the Articles of Confederation certain states ceded to Congress their claims to the lands lying north and west of the Ohio river, and the United States thus came into possession of a property in which colonists from the eastern states were already beginning to settle. Jefferson's Ordinance of 1784 divided this western country directly into states, but the Ordinance of 1787 established an intermediate stage of government and provided for the division and the erection into states at some later time. With the re-enactment of the latter ordinance in 1789 by the First Congress under the new constitution and the establishment, less than ten months later, of this same form of government in the North Carolina cession, the policy of the Ordinance of 1787 may be said to have been adopted, and ever since that time, as that ordinance had been enacted for " the territory of the United States northwest of the river Ohio," the name of " territory " has been applied to this intermediate stage of government.

The fundamental principle of the territorial system of the United States has been that these colonies or territories were to be under the direct supervision and control of Congress, but that they were to be treated as states in embryo. That is, they were to be granted an increasing measure of self-government ; they were to be encouraged in their development until they had grown so great that they might claim the right of advancement to the full rank of statehood ; and this right was to be accorded to them, and they were to be admitted into the Union on an equal footing with the original states

as soon as might be consistent with the interests of the country as a whole. In accordance with this principle twenty-eight territories have been organized, all but three of which have become states and members of the Union.¹ Until the recent and unexpected acquisition of territory, as a result of our war with Spain, somewhat changed the conditions, only two deviations from this policy are to be met with in the entire course of a history that is the record of an unparalleled growth and expansion. The first of these deviations occurred in 1804, at the time of the establishment of a government in the newly-acquired province of Louisiana, and was only a momentary lapse from our established policy, and the second has been in the case of Alaska.²

When Jefferson in 1803 purchased the vast tract of country to the west of the Mississippi there were many persons in the United States, and the President himself was among the number, who felt that this action was contrary to the established principles of the Constitution and that an amendment to that instrument would be necessary to validate the acquisition. But the purchase of Louisiana was so evidently beneficial to the interests of the United States and was so generally acquiesced in by the people, that the proposal to amend the Constitution was soon dropped and never seriously brought up again.³ Owing, however, to the location of Louisiana, lying outside of the original limits and beyond what had come to be regarded as the natural boundary of the United States, and on account of the character of the inhabitants and the fact that their previous training had little fitted them for the responsibilities of self-government, Congress was not quite ready to extend the principles of our territorial system to the whole of this vast country, and when it came to the establishment there of some form of government Congress made a distinction. The southern part was organized as the Territory of Orleans with a government not, it is true, of the same representative type as that of the second stage

¹ New Mexico, Arizona and Oklahoma, all of which seem likely to be allowed to organize as states in the near future.

² The District of Columbia is not here included because it so evidently forms no part of our territorial system. That it should be called a district and not a territory has no reference whatever to its lack of representative institutions, or to the fact that it can never become a state. It was originally referred to, apparently on account of its size, as a "district of territory," and the name of District of Columbia was applied to it long before any sort of government was established for it by Congress, and, indeed, years before the seat of government was moved from Philadelphia to Washington; and when, in the years 1871 to 1874, the experiment was tried of granting it a regular territorial government, the name of District of Columbia was still retained.

³ It is remarkable how little originality is shown by the present opponents of expansion. All of their arguments were presented at the time of the Louisiana purchase, and were answered then as now by the inexorable logic of facts.

under the Ordinance of 1787, but still with a regularly organized territorial government, while in all of the northern part no regular government was established, but the officials of the Territory of Indiana were given authority over it; and this northern part was not called a territory but the District of Louisiana.¹

That this distinction in name was as intentional as the difference in government is shown (1) by the remonstrance of the inhabitants of the District of Louisiana against the sort of government that had been provided for them and their petition for officers and a government of their own in accordance with the principles of the Ordinance of 1787,² (2) by the report of the committee of the House of Representatives appointed to consider the question,³ and (3) by the fact that when Congress in 1805 acceded to this request and gave to the District a government of its own, its name was changed to that of the Territory of Louisiana.⁴ As has been said, this was only a momentary lapse from the accepted policy of the United States, for the District of Louisiana was changed to a territory within a year from the time of its first establishment, but the mere fact of its existence for however short a time is of considerable significance.

From this time until after the close of the Civil War the territorial acquisitions were so evidently a fulfilment of our "manifest destiny," and in most cases were so closely bound up with the slavery question, that the organization of these acquisitions into territories followed almost immediately and as a matter of course. But with the purchase of Alaska in 1867 the territorial system of the United States entered upon a new phase. The remote situation of Alaska, its inhospitable climate, the difficulty of developing such resources as it might prove to have, and especially the fact that its scanty population was so largely composed of uncivilized Indians, all tended to render it extremely improbable that this region would ever sufficiently develop to be organized as a state and to be admitted into the Union. And this fact was recognized in the treaty by which we acquired possession of Alaska. In the treaties with France, Spain and Mexico, by which our other territorial acquisitions had been made, it was specifically provided that the inhabitants of the ceded territories should be incorporated into the Union. But in the treaty with Russia for the cession of Alaska it was only stipulated that the civilized inhabitants should have the rights and privileges of the

¹ For the details of this and other legislation already referred to, see Farrand, *Legislation of Congress for the Government of the Organized Territories of the United States, 1789-1895*, Newark, N. J., 1896.

² *Annals of Congress*, 8th Cong., second sess., pp. 1608-1619.

³ *Ibid.*, pp. 1014-1017.

⁴ Act of March 3, 1805.

citizens of the United States, while the uncivilized tribes were to be completely under the regulation of Congress.¹

For seventeen years from the time of its cession the inhabitants of Alaska were allowed to shift for themselves and only in 1884, when the establishment of some form of civil government became imperative, was an act for this purpose passed. It was not a regularly organized territory but a "civil district" that was thereby constituted. There was to "be appointed for the said district a governor," who was to have the usual powers and to "perform such acts as pertain to the office of governor of a territory," and it was specified that there should "be no legislative assembly in said district, nor shall any Delegate be sent to Congress therefrom," but certain laws of the United States and "the general laws of the State of Oregon, . . . so far as the same may be applicable," were declared to be the law in said district.² In order to place beyond any question just what was intended by this act, we shall let the framers of the bill speak for themselves. Benjamin Harrison was then chairman of the Committee on Territories. In explanation of the bill when it was before the Senate, he said, "We are attempting here some legislation that is *sui generis* in some respects. . . . It was not believed that we should confer upon the few people residing there a full territorial organization. We have described this Territory as a civil district, and have organized for it a government simple in form . . . and yet one that we believe will be efficient to bring to every resident of the Territory . . . the reasonable protection of life, liberty, and the pursuit of happiness."³ And Mr. Garland of Arkansas, also a member of the Committee on Territories, further stated, "The bill does not undertake to provide what we call technically a Territorial government for Alaska, but . . . we deemed that Congress had the power to provide just such a government as it saw proper there, anything short, if you please, of a regular Territorial government, as we understand it technically."⁴

Thus Alaska was constituted and still remains a "district." In a general sense it may be regarded as one of the territories of the United States. But when terms are strictly used Alaska is to be designated as a district rather than a territory, meaning by that a part of the public domain (or property of the United States)

¹ The writer is under great obligations to Mr. Walter MacNaughten of Wesleyan University for his assistance in the preparation of this article, especially in the examination of the records of Congress relating to Alaska.

² *Statutes of the United States*, 48th Cong., first sess., Chap. 53.

³ *Cong. Rec.*, 48th Cong., first sess., p. 594.

⁴ *Ibid.*, p. 631.

to which representative institutions are not accorded and which there is no intention of incorporating as a state into the Union, or at least no immediate probability that it will be so incorporated.¹

As a result of our recent war with Spain the United States has come into the possession of large tracts of land lying outside of the American continent. Some of the strongest objections to the acquisition of these islands are due to the fact that they are frequently referred to as "colonies" of the United States, and it is felt that we have the right neither to hold nor to acquire colonies.² The matter is little bettered by designating these possessions as territories, for this has been generally understood to mean that they were to be organized as regular territories having governments such as are established in New Mexico, Arizona and Oklahoma, with the implied obligation of eventually admitting them into the Union, whereas it is decidedly questionable whether the inhabitants are fitted to exercise the rights of self-government, and there is no doubt that we are not ready to take the position that these new possessions are ever to become states and members of the Union.

It is not within the province of this paper to discuss the constitutional right of the United States to acquire these islands; their acquisition is an accomplished fact in which the people generally have acquiesced just as they did in the purchase of Louisiana. Nor is it the intention of the writer to discuss what rights and privileges must be or ought to be granted to the inhabitants of the islands. It is desired simply to point out that, in the history of the United States, territory has been acquired, concerning which there was considerable doubt as to whether it could ever be raised to the dignity of statehood and incorporated into the Union, and concerning which there was no doubt that the inhabitants were not fitted to exercise the rights of self-government; that in those cases Congress

¹ The Federal Supreme Court, in the case of the *Steamer Coquiltam vs. the United States* (163 U. S., 346), has declared that "Alaska is one of the Territories of the United States," but this assertion was made solely with reference to the similarity of the judicial courts of Alaska to other territorial courts and in no way invalidates the distinction that is here made between a district and a territory. Appropriation acts and other statutes of Congress refer loosely now and again to the Territory of Alaska, but when terms are carefully used the above distinction is made. Thus the governor is almost invariably referred to as the governor of the District of Alaska, the statistics of the Eleventh Census were ordered to be taken for the District of Alaska, and in the act of March 3, 1899, establishing a criminal code for Alaska, although in the debates in Congress on this measure the Territory of Alaska was generally spoken of, it was for the District of Alaska that the code was enacted.

² To the best of the writer's knowledge, this is the first time in our history that territorial possessions of the United States have been referred to as colonies, a term that was most carefully avoided by our fathers in all of our earlier history and one that still calls forth the strongest opposition.

has established the precedent of granting a form of civil government without representative institutions ; and that until the inhabitants were capable of governing themselves and had been accorded this privilege, with its implication of later admission into the Union, their body politic was to be designated a district rather than a territory.

It is not easy to draw a hard and fast line between a territory and a district, for there will be many instances in which the form of government of the one will shade off into that of the other ; special considerations, particularly with reference to our new possessions, will have to be taken into account. The question into which class each shall fall must be decided in the particular case ; but the general principles of the distinction are not hard to make. Both the territory and the district may be said to be included in our territorial system, but until any particular part is capable of self-government and has been granted representative institutions in accordance with such self-government, and until it is our recognized intention that such part shall eventually be organized as a state and admitted into the Union, let that part be known as a district and not as a territory. Thus, under what seems to be the present attitude towards our new possessions, let us speak of the Territory of Hawaii, but of the District of Porto Rico and the District of Luzon or the Philippines.¹

MAX FARRAND.

¹ The government that has been established for "the island" of Porto Rico is in a large measure representative, but it is significant that a proposal in the Senate to amend the bill so that it should read for "the territory of Porto Rico," was opposed by Mr. Foraker, the chairman of the Committee on the Pacific Islands and Puerto Rico, and was finally rejected by the Senate (*Cong. Rec.*, 56th Cong. first sess., pp. 3749 and 3800).